

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)

WT Docket No. 9718

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS
OF THE AMERICAN PUBLIC POWER ASSOCIATION**

The American Public Power Association (APPA) respectfully submits these reply comments in response to the Federal Communications Commission (FCC)'s *Further Notice of Proposed Rulemaking*, in the above-captioned proceeding concerning the future licensing of Multiple Address Systems (MAS) in the 900 MHz band. Consistent with the requirements of the Balanced Budget Act of 1997 (BBA)¹, the FCC should designate the 928/952/956 MHz band exclusively for use by private internal communications of state and local government entities and other public safety radio service users, and should immediately lift the freeze on applications by all such public safety users.

I. Introduction and Background

As the national service organization representing the interests of more than 2,000 public, not-for-profit electric utilities that provide electricity to one in every seven Americans in the continental United States, APPA filed comments in support of the emergency Petition filed by the Critical Infrastructure Industry (CII), to lift the current freeze on MAS applications in the 928/952/956 MHz bands. In the alternative, APPA requested that its filing be treated as a "Petition for a Limited Exception to the MAS Application Freeze," with respect to state and local government entities, as is required by the specific terms of the BBA. In these reply comments APPA reiterates this request, and seeks to provide the

¹ The Balanced Budget Act of 1999, P.L. No. 105-33 (enacted August 5, 1997).

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Commission additional information with regard to the specific uses of MAS spectrum by public power utilities.

I. Background

In 1997 the FCC issued a *Notice of Proposed Rulemaking (NPRM)* to address the future licensing of the 900 MHz MAS bands.² The FCC proposed to designate most of the spectrum in the 932/941 MHz bands and all of the spectrum in the 928/959 MHz bands for subscriber-based services, and to use competitive bidding to choose among mutually exclusive applications for licenses in these bands. At the same time, recognizing that MAS has long been a mainstay of public safety-related utility telecommunications networks, the FCC proposed to designate the 928/952/956 MHz bands exclusively for private, internal use, and not to utilize competitive bidding to select among mutually exclusive applications in these bands.³ In addition, the FCC proposed to allocate a portion of the 932/941 MHz spectrum for "public safety" radio users in order to alleviate some of the pent-up demand by these critical users.

Subsequent to the release of the *NPRM*, Congress enacted the *Balanced Budget Act of 1997 (BBA)*, which amended the FCC's spectrum auction authority by eliminating a previous exemption for spectrum whose principal use was not for subscriber-based services. While broadening the FCC's general auction authority, Congress took pains to create a specific statutory exemption from spectrum auctions for "public safety radio services," which are defined under the Act as:

² *Amendment of the Commission's Rules regarding Multiple Address Systems*, WT Docket No. 97-81, *Notice of Proposed Rule Making (NPRM)*, 12 FCC Rcd 7973 (1997).

³ *Id.* at 7980.

[P]rivate internal radio services used by *State and local governments* and non-government entities and including emergency road services provided by not-for-profit organizations, that -- (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.⁴

The FCC has reopened the record in the MAS proceeding, "to assess the impact of the Balanced Budget Act on [its] proposals and tentative conclusions."

Specifically, with respect to the 928/952/956 MHz band the FCC's *Further Notice of Proposed Rulemaking (FNPRM)* inquires as to "whether or not the auction exemptions set forth in 309(j)(2) apply, and if so, whether "public radio safety services" represent the current dominant users of this band to such an extent that the Commission should allocate part, or all, of this band for such public radio services. In order to preserve its flexibility with the use of this band pending the outcome of the *FNPRM*, the FCC implemented a freeze on the acceptance of all new applications for the use of this band irrespective of the type of applicant or proposed use.

As is discussed more fully below, the comments overwhelmingly demonstrate that the predominant use of the 928/952/956 MHz band is for public safety users, such as state and local government entities including public power utilities, and as such compels an exclusive allocation of this band to "public safety radio services" as defined in the BBA. Moreover, given the undisputed public safety nature of state and local government use of the band, the Commission should immediately lift the current freeze on the acceptance of applications by all such entities.

⁴ BBA at Title III, § 3002, adding a new Section 337(f)(1) to Title III of the Communications Act of 1934, emphasis added.

II. The Predominate Use Of 928/952/956 MHz Band Is For Public Safety Services That Are Statutorily Exempt From Auctions

APPA submits that the public safety radio service auction exemption clearly applies to the MAS spectrum. The statutory language in no way limits the application of the auction exemption to discrete bands, but instead applies wherever public safety radio users have a specific need and are among the predominate users of the spectrum. Moreover, as UTC notes, in drafting the spectrum auction provisions of the BBA, Congress expressed its clear intent to exempt both the licenses and the entities that use such licenses to operate private internal networks to protect the safety of life, health and property. Absent the ability of public safety radio service users to obtain and retain access to non-auctioned spectrum, the statutory exemption would be meaningless.

As was demonstrated in the initial comment round in this proceeding, the predominant current and future users of the MAS bands are comprised of state and local government entities, including public power utilities and other providers of the nation's critical infrastructure. These comments further confirmed that the vast majority of the actual users of the 928/952/956 MHz band utilize this spectrum purely for private, internal MAS applications related to public safety and public service. As such, the Commission should reserve this band exclusively for public safety radio users, as was contemplated by Congress.

The express statutory language of the BBA fully demonstrate that Congress intended that public power utilities be exempt from spectrum auctions. As indicated above, the statutory exemption explicitly applies to "private internal radio services used by state and local governments." Thus, the exemption clearly applies to public power utilities that are units of state and local government, and affords the Commission no latitude with respect to interpreting this provision.

State and local government use of MAS channels is inextricably related to the protection of life, health and property as is required by the statute. This is because by their very nature and charter local governments are charged with protecting the welfare of their communities. Because of the inherent safety issues involved in operating water, wastewater, gas and electric utility systems, public utilities rely on sophisticated telecommunications systems to manage, monitor and control these facilities. MAS is often the most efficient, reliable, secure and cost effective communications system to carry out these critical functions. APPA's members utilize the 900 MHz band for Supervisory Control and Data Acquisition (SCADA) of power plants, transmission and distribution systems and substations, demand side management, environmental monitoring and automatic meter reading. In addition to electric utility applications, many state and local governments operate MAS systems that involve other public safety applications ranging from controlling gas distribution regulators, water treatment/delivery facilities or wastewater treatment facilities to flood control and early warning systems. As APPA noted in its initial comments, in many communities a single municipal utility department will often be responsible for the operation of multiple communications networks within the city. For example, Colorado Springs Utilities operates an MAS-SCADA network that is utilized for electric, gas, water, wastewater and environmental monitoring. In some instances, multiple use local government and municipal utility MAS systems include police, fire and other emergency service applications. The comments of the American Water Works Association (AWWA) further confirm the interdependence between municipal utility communication networks and public safety, noting that in many instances MAS systems are utilized to control valves and ensure sufficient water pressure for fire hydrants.

Further, consistent with the statutory requirement that exempt public safety radio services not be made commercially available to the public, state and local government MAS networks, including those

operated by public power utilities, are operated as an internal tool in support of their underlying public service activities and obligations and are therefore not utilized on a commercial basis.

In addition, to the express statutory language exempting state and local government entities, the legislative history of the BBA further supports the application of the exemption to public power utilities. The Conference Committee report that accompanied the BBA, clarified Congressional intent that the scope of the spectrum auction exemption include utilities stating:

[The] exemption from competitive bidding authority for "public safety radio services" includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances and volunteer fire departments.

This statement unequivocally demonstrates that Congress recognized that because, utilities and others rely on private internal radio systems to protect the safety of life, health and property, the public interest is best served by ensuring that such users of critical services are not jeopardized by spectrum auctions.

Having established that the primary current and anticipated use of the 928/952/9566 MHz MAS bands is for public safety-related communications, and consistent with the importance assigned by Congress to the use of spectrum to protect public safety, as evidenced by the BBA, the FCC should conclude that the 928/952/956 MHz band must necessarily be reserved for public safety radio service users, including public power utilities.

III. Continued Application of The Freeze With Respect To Public Safety Entities Is Contrary To Statutory Language Of The BBA And The Public Interest

Given the undisputed evidence that public power utilities, and other units of state and local government, as well as other public safety entities are the predominant users of the band, and that Congress specifically intended that such entities be exempt from auctions, the FCC should immediately lift the freeze on applications for the 928/952/956 MHz band by public safety radio service eligibles. In particular, the application of the freeze to state and local government entities, including public power

utilities, is wholly unwarranted, contrary to Congressional intent and inconsistent with the underlying record in this proceeding. The application of the freeze impedes the ability of public utilities to safely provide reliable electric, water, wastewater and gas service and frustrates on-going energy system construction efforts that have been planned, budgeted and initiated by local governments around the country.

The freeze is already impeding the ability of state and local government utilities around the country to implement critical systems. The following is a representative sampling of the detrimental impact of the continued application of the freeze to APPA's members:

- Longmont Power (CO.) has been impeded in its ability to move forward in its planned expansion of its existing SCADA system to include distribution control equipment.
- Lafayette Utilities System (LA.) is unable to continue with its planned addition of wastewater sites to its electric utility MAS system.
- Denton Municipal Utilities (TX.) planned addition of remote terminal units to its existing SCADA system has been hampered.
- Lincoln Electric System (NE.) is unable to continue with its planned expansion of its SCADA system to include distribution automation and automatic meter reading.
- Nebraska Public Power District (NE.) cannot proceed with its planned expansion of its demand side management to its retail member communities.
- Kansas City Board of Public Utilities (KS.) has been forced to put all work on hold with respect to its plan to reduce the poll rate and bit error rate of its existing MAS network.
- Salt River Project (AZ.) has been frustrated in its efforts to expand and upgrade its existing MAS network that is used for water distribution and control.

Moreover, because of the specialized nature of MAS systems there are often no commercially available substitutes for the operation of these systems that provide the requisite degree of reliability same. For example, as a result of the freeze, City Public Service of San Antonio, Texas, has been unable to expand its SCADA system to gas regulators, distribution switches and customer controls as planned. As an interim measure it has been forced to utilize an unlicensed spread spectrum system, but is highly reluctant to trust such mission critical applications to an unlicensed system on a permanent basis.

In addition, few commercial operators provide the specialized types of networks that utilities require of MAS systems. The non-availability of commercial carriers to provide such communications capabilities is particularly true in the rural areas where many of APPA's members operate. Even in instances where such commercial providers are available they often prove to be unreliable, especially during severe weather and other natural disasters when utility system monitoring and control is particularly critical.

As the above examples illustrate, the imposition of the freeze only serves to hinder the ability of public power utilities, and other exempt entities, to provide public safety services. This is precisely the outcome that Congress sought to avoid in creating the public safety exemption. This point was confirmed in recent bi-partisan letters to the FCC from leaders in the House and Senate. On September 12, 1999, twelve members of Congress sent the Commission a letter urging it to lift the current freeze on the acceptance of 928/952/956 MHz MAS applications by public safety radio services users, including public power utilities. The letter specifically recognized that the "suspension on the filing of applications for these frequencies will impede utility and pipeline access to technologies that are essential elements in energy management systems" and that lifting the freeze would "result in significant benefits to consumers,

emergency and water systems.”⁵ The letter also explicitly reinforced the intent of Congress to exempt utilities of all kinds from spectrum auctions stating: “Given the critical infrastructure responsibilities of utilities as well as their public safety functions, Congress decided in the Balanced Budget Act of 1997 to exempt utilities from competitive bidding.” A similar letter signed by ten Senators was submitted to the FCC on September 24, 1999.⁶

Apart from frustrating Congressional intent, the freeze is also having the very real effect of interfering with the operation of critical government-owned utility systems, which could compromise the integrity of these systems and potentially jeopardize public safety.

IV. Additional Channels In the 932/941 MHz Band Are Necessary For Public Safety

In addition to retaining the 928/952/956 MHz band for public safety radio service users, the FCC should allocate a portion of the 932/941 MHz spectrum for such users, including public power utilities, in order to alleviate some of the pent-up demand by these critical services. In order to meet the current and future public safety requirements of state and local government entities and other critical infrastructure providers the FCC is urged to expand upon its initial proposal of designating five channels within the 932/941 MHz band to reserve twenty channels exclusively for these uses. In many areas of the country, the existing channels in the 928/952/956 MHz band have already been exhausted. Moreover, as MAS systems are expanded in the near future to provide enhanced distribution system capabilities, there will be a corresponding increase in channel demand by public safety related services.

⁵ Letter from W.J. Tauzin (R-LA), Gil Gutknecht (R-MN), Nathan Deal (R-GA), John Murtha (D-PA), Tom Campbell (R-CA), Barbara Cubin (R-WY), Dennis Moore (D-KS), Jim Ramstad (R-MN), Michael Oxley (R-OH), David Bonoir (D-MI), Jim Greenwood (R-PA), and George Nethercutt, Jr. (R-WA).

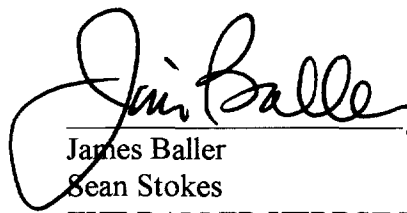
⁶ Letter from Slade Gorton (R-WA), Rod Grams (R-MN), Sam Brownback (R-KS) Pat Roberts (R-KS), John Ashcroft (R-MS), Charles Grassley (R-IA), Olympia Snowe (R-ME), John Kerry (D-MA), Paul Wellstone (D-MN) and Patty Murray (D-WA).

IV. Conclusion

For all of the above reasons, APPA urges the Commission to allocate the 928/952/956 MHz bands exclusively for public safety radio service users and promptly lift the freeze on the filing of applications for this spectrum as requested by the CII, or at a minimum to lift the freeze with respect to state and local government entities, including public power utilities. In addition, the FCC should allocate twenty channels in the 932/941 MHz band exclusively for public safety radio services.

APPA respectfully urges the Commission to take action in accordance with the views expressed in this pleading.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Baller", is written over a horizontal line.

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